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No. 80-2005

In the Supreme Court of the United States

October Term, 1980

ROBERT F. WALSH,
Petitioner,

vs.

FORD MOTOR COMPANY, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the Supreme Court of Ohio

JAMES H. FRENCH, *Counsel of Record*
FRENCH & FRENCH
1514 Terminal Tower
Cleveland, Ohio 44113
(216) 621-4260
Counsel for Petitioner

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 621-5647

QUESTIONS PRESENTED

1. Whether it is a denial of due process of law when a party to an action is not given notice of the filing of a judgment entry.
2. Whether it is a denial of due process of law when a court fails to notify the parties or their attorneys that the court has prepared an opinion and placed its own judgment entry of record.

LIST OF PARTIES

Petitioner:

ROBERT F. WALSH

Respondents:

FORD MOTOR COMPANY

RAYMOND A. CONNOR, Administrator
Bureau of Workers' Compensation for the State of Ohio

THE INDUSTRIAL COMMISSION OF OHIO

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No. .....

In the Supreme Court of the United States

October Term, 1980

ROBERT F. WALSH,
Petitioner,

vs.

FORD MOTOR COMPANY, *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI

To the Supreme Court of Ohio

The petitioner, Robert F. Walsh, respectfully prays that a writ of certiorari issue to review the denial of the Motion for an Order Directing the Court of Appeals for Lorain County to Certify its Record and the dismissal of the appeal to the Supreme Court of Ohio entered in this proceeding on February 26, 1981.

OPINION BELOW

The order of the Supreme Court of Ohio, overruling the Motion to order the Court of Appeals for Lorain County to certify its record by the Supreme Court of Ohio, the decision and journal entry of the Court of Appeals for Lorain County, the order of the Court of Common Pleas for Lorain County denying the Motion for Relief from Judgment, the record of proceedings of the Industrial Commission of Ohio denying the C-92A application for additional Workers Compensation benefits.

JURISDICTION

The Supreme Court of Ohio overruled Robert F. Walsh's Motion for an Order Directing the Court of Appeals for Lorain County to certify its record and therefore sua sponte dismissed the appeal on February 26, 1981. This petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment XIV, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Ohio Rules of Civil Procedure Rule 54(A), Judgments; Costs:

"(A) Definition; form. 'Judgment' as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a referee or the record of prior proceedings."

Ohio Rules of Civil Procedure Rule 58, Entry of Judgment:

"Subject to the provisions of Rule 54(B), upon a general verdict of a jury, or upon a decision announced, the

court shall promptly cause the judgment to be prepared and, the court having signed it, the clerk shall thereupon enter it. A judgment is effective only when filed with the clerk for journalization. Entry of the judgment shall not be delayed for the taxing of costs.

Amended July 1, 1971."

Ohio Rules of Civil Procedure Rule 60(A)(B), Relief From Judgment or Order:

"(A) Clerical mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

"(B) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be

made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules."

Ohio Rules of Appellate Procedure, Rule 4(A), Appeal As of Right—When Taken:

"(A) Appeals in civil cases. In a civil case, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within thirty days of the date of the entry of the judgment or order appealed from. A notice of appeal filed before entry of such judgment or order shall be treated as filed after such entry and on the day thereof. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within ten days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is suspended as to all parties by a timely motion filed in the trial court by any party pursuant to the Civil Rules hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the entry of the last of any of the following orders made upon a timely motion under such rules granting or denying a motion (1) for judgment under Rule 50(B); (2) for a new trial under Rule 59. A judgment or order is entered within the meaning of this subdivision when it is filed with the clerk of the trial court for journalization."

Ohio Revised Code 4123.52.2. Failure to Receive Notification:

"The employee, employer and their respective representatives shall be entitled to written notice of any hearing, determination, order, award or decision under the provisions of Chapter 4123 of the Revised Code.

If any person to whom a notice is mailed shall fail to receive such notice and the industrial commission, upon hearing, shall determine that such failure was due to cause beyond the control and without the fault or neglect of such person or his representative and that such person or his representative did not have actual knowledge of the import of the information contained in such notice, such person may take the action afforded to such person within twenty days after the receipt of such notice of such determination of the industrial commission. Delivery of such notice to the address of such person or his representative shall be prima facie evidence of receipt of such notice by such person."

STATEMENT OF THE CASE

On May 13, 1965, the petitioner, Robert F. Walsh, sustained an injury, in the course of his employment at Ford Motor Company, to his head and upper back. His claim for workers' compensation benefits was recognized by his employer and the Bureau of Workers' Compensation. On January 2, 1976, the petitioner, Robert F. Walsh, filed an application for an increase in his percentage of permanent partial disability in his Ohio Workers' Compensation Claim No. 417084-22. A hearing was held on October 29, 1976, to determine if his disability had, in fact, increased. At that time, the respondent, Ford Motor Company, requested that the application be dismissed because Mr. Walsh had

entered into a settlement agreement in another claim. (Mr. Walsh had sustained another injury on March 18, 1973, while employed at Ford Motor Company. This claim for Workers' Compensation benefits was disputed by his employer. On February 13, 1975, Mr. Walsh entered into an agreement to settle this claim only (518271-22)). It was at this hearing that Mr. Walsh heard for the first time that his employer had considered a settlement in one claim, 518271-22, to be a settlement of all his claims, including Claim No. 417084-22.

On July 6, 1977, the Cleveland Regional Board of Review referred the appeal of the decision of the district hearing officer dated October 29, 1976, to a staff hearing officer.

The Industrial Commission of Ohio, on May 8, 1978, denied Mr. Walsh's appeal. On July 3, 1978, a Notice of Appeal and a Complaint were filed in the Lorain County Common Pleas Court. The trial court, on November 9, 1979, heard oral arguments on a Motion for Summary Judgment which had been filed by the Ford Motor Company. On November 29, 1979, the trial court entered a judgment granting the Motion. Notice of this decision and the trial court's reasons for its decision were not sent to the parties. Robert F. Walsh filed a Motion for Relief from Judgment in accordance with Rule 60(A)(B) of the Ohio Rules of Civil Procedure, on March 12, 1980. The trial court denied this Motion on April 28, 1980. An appeal was, then, filed with the Court of Appeals, Ninth District of Ohio, on May 23, 1980.

On November 5, 1980, the Appellate Court overruled the assignments of error. An appeal of this decision was filed with the Ohio Supreme Court on January 5, 1981.

REASONS FOR GRANTING THE WRIT

1. Due Process of Law Should Be Extended to Include Notice of a Judgment Entry Which Affects Appellate Rights.

The Ohio Rules of Civil Procedure do not require that a party be given notice of the filing of a judgment entry by a trial court. This fact has been confirmed by court decision.

"There is no requirement under the Ohio Rules of Civil Procedure to give a party to an action notice of the filing of a judgment entry and such a failure does not deny him due process of law." *Centers, Inc. v. Abraham,* 46 Ohio App. 2d 262, 348 N.E.2d 741 (1975).

However, as a matter of practice in Ohio, the decisions of the Appellate Courts and of the Supreme Court are issued. In a Workers' Compensation claim in Ohio, the parties are entitled to receive a notice of a hearing or decision.

"The employee, employer and their respective representatives shall be entitled to written notice of any hearing, determination, order, award or decision under the provisions of Chapter 4123 of the Revised Code. . . ." Ohio Revised Code 4123.52.2.

Rule 4(A) of the Ohio Rules of Appellate Procedure and Ohio case law hold that an appeal must be filed within thirty (30) days of a judgment being entered for journalization by the Clerk of Court. *Bosco v. City of Euclid,* 38 Ohio App. 2d 40 (1974); *McCue v. Insurance Co.,* 61 Ohio App. 2d 101 (1979).

Recently, the Supreme Court of Ohio ruled in the case of *Alan R. Jones, et al. v. City of Cincinnati* (C.A. No. 800622, October 16, 1980—copy attached) that the appeal filed by the City of Cincinnati was dismissed for the reason that no substantial constitutional question existed. (This case is presently before the Supreme Court of the United States, Case No. 80-1814, in a similar Petition for a Writ of Certiorari.)

The Supreme Court of the United States, in an opinion written by Justice Brandeis, suggested that "Entry of judgment without notice may be a denial of due process, even where there is jurisdiction over the person and subject matter." *American Surety Company v. Baldwin*, 287 U.S. 156, 168 (1932). There has not, to date, been a formalization of Justice Brandeis' suggestion by the Supreme Court. Due process of law should include notice to the parties that a judgment entry has been made which affects their appellate rights.

2. Notice of a Decision Is As Essential to Due Process As Notice of a Proceeding and Opportunity to Be Heard.

Ohio law and court decisions have ensured proper protection of a person's right to notice and an opportunity to be heard. However, the silence in regard to notice of a decision, causes a continuing conflict between Civil Rule 60(A)(B) and Appellate Rule 4(A). It is a situation from which not even Houdini, in one of his greatest moments, would be able to extricate himself.

Even if a party meets all the requirements of Rule 60(A)(B), relief will not be granted if and because an appeal has not been filed in accordance with Appellate Rule 4(A). If notice of the judgment is not issued or received, it is impossible to obtain relief under the guide-

lines of Civil Rule 60(A)(B). A party cannot appeal within thirty (30) days a decision he has had no indication has been made by the court.

For a trial court to demand the appearance of all the parties, to request and receive briefs in support of a Motion but not have a concurrent responsibility to issue a notice of its decision is a denial of due process and is a hollow procedure. Form without substance is unfair to all litigants. It is almost impossible for the participants to an action to be as vigilant as the Ohio Supreme Court has requested in its failure to extend the concept of notice to the most basic, the most pervasive and the most apparent court in Ohio—the trial court, whether it be a municipal or a county or a common pleas court.

It does not appear that this question will be resolved by the Ohio Court system unless the Supreme Court of the United States intervenes and extends the concept of due process to receiving a notice of a court's decision.

CONCLUSION

The courts in Ohio will continue to deny Motions for Relief from Judgment as long as this conflict between its rules exist and as long as there is no requirement to notify the parties to an action that a decision has been made. The resolution can and should emanate from the United States Supreme Court.

Respectfully submitted,

JAMES H. FRENCH
FRENCH & FRENCH
1514 Terminal Tower
Cleveland, Ohio 44113
(216) 621-4260
Counsel for Petitioner

APPENDIX

ORDER OF THE SUPREME COURT OF OHIO OVERRULING MOTION TO CERTIFY

(Dated February 26, 1981)

No. 80-1786

THE SUPREME COURT OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS.

ROBERT F. WALSH,
Appellant,

vs.

FORD MOTOR COMPANY *et al.*,
Appellees.

MOTION FOR AN ORDER DIRECTING THE COURT OF APPEALS FOR LORAIN COUNTY TO CERTIFY ITS RECORD

It is ordered by the Court that this motion is overruled.

DECISION AND JOURNAL ENTRY OF THE COURT OF APPEALS

(Dated November 5, 1980)

C.A. No. 3054

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT
LORAIN COUNTY, OHIO

ROBERT F. WALSH,
Plaintiff-Appellant,

v.

FORD MOTOR COMPANY, *et al.*,
Defendant-Appellees.

APPEAL FROM JUDGMENT ENTERED IN THE COMMON PLEAS COURT, LORAIN COUNTY, OHIO
CASE NO. 83258-78

DECISION AND JOURNAL ENTRY

This cause was heard October 23, 1980, upon the record in the trial court and the briefs. It was argued by counsel for the parties and submitted to the court. We have reviewed each assignment of error and make the following disposition:

PER CURIAM

This appeal is from the denial of a Civ. R. 60(B) motion to vacate a judgment entered on appellee Ford's motion for summary judgment. We affirm.

On November 9, 1979, the trial court took Ford's motions for summary judgment under advisement. On November 29, the court filed its entry granting the judgment. Appellant Walsh's counsel denies ever receiving a copy of the entry. He learned of the decision shortly before filing the Civ. R. 60(B) motion to vacate on March 12, 1980. The basis of the motion was that neither the appellant or the appellees, nor their representatives had received any notice of the court's November 29, decision.

The issue raised by the appellant is a recurring one which perhaps should be addressed by the supreme court in the court rules. However, under the present state of the court rules, the only purpose of appellant's Civ. R. 60(B) motion would be to circumvent the 30 day appellate period under App. R. 4(A). See *Bosco v. City of Euclid*, 38 Ohio App. 2d 40 (1974).

Accordingly, the first assignment of error is overruled and the judgment affirmed. The second assignment of error is not properly before the court.

The court finds that there were reasonable grounds for this appeal.

We order that a special mandate, directing the Lorain County Common Pleas Court to carry this judgment into execution, shall issue out of this court. A certified copy of this journal entry shall constitute the mandate, pursuant to App. R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be

file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App. R. 22(E).

Costs taxed to appellant.

Exceptions.

/s/ SAM H. BELL
Presiding Judge for the Court

BELL, *P. J.*
VICTOR, *J.*
MAHONEY, *J.*
Concur

JUDGMENT ENTRY OF COURT OF COMMON PLEAS

(Dated April 25, 1980)

Case No. 83258-78

COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

ROBERT F. WALSH
Plaintiff

vs.

FORD MOTOR COMPANY *et al.*
Defendant

(Dated April 25, 1980)

After hearing on the Motion the Court could ascertain no reason to vacate the original judgment and substitute a similar entry. Motion denied.

/s/ ADRIAN F. BETLESKI
Judge

FINDINGS OF FACT AND MINUTES OF THE INDUSTRIAL COMMISSION OF OHIO

(Date of Hearing May 8, 1978)

STATE OF OHIO
BUREAU OF WORKMEN'S COMPENSATION
AND
THE INDUSTRIAL COMMISSION OF OHIO

ORIGINAL RECORD OF PROCEEDINGS

Claimant Robert F. Walsh	Claim No. 417084-22
Street and No. 344 Quail Drive	
City Elyria	(State) Ohio 44035
Employer Ford Motor Company	Date of Injury 5-13-65
Street and No. P. O. Box 46	
City Lorain	(State) Ohio 44052

Findings of Facts and Minutes

FHK: (balance illegible)

On this day this claim was heard and findings and orders were made as follows:

This claim came on for hearing before Hearing Officers Kearns and Krohn as provided for in Revised Code Section 4121.06 on the question of claimant's application filed 11-23-76 for reconsideration of Industrial Commission order of 10-29-76 wherein it was found that this claim has been

settled. Notices were mailed to the claimant, the employer, their respective representatives and the Administrator of the Bureau of Workers' Compensation not less than 14 days prior to this date. It is further the finding of the Hearing Officers that this claim has been recognized for injury to head and upper back.

It is further the finding of the Hearing Officers that the claimant's application filed November 23, 1976 be denied and the order of the Industrial Commission dated October 29, 1976 is affirmed.

FINDINGS OF FACTS AND MINUTES OF THE INDUSTRIAL COMMISSION OF OHIO

(Hearing October 29, 1976)

STATE OF OHIO
BUREAU OF WORKMEN'S COMPENSATION
AND
THE INDUSTRIAL COMMISSION OF OHIO

ORIGINAL RECORD OF PROCEEDINGS

Claimant Robert F. Walsh	Claim No. 417084-22
Street and No. 344 Quail Drive	
City Elyria	(State) Ohio 44035
Employer Ford Motor Company	Date of Injury 5-13-65
Street and No. P. O. Box 46	
City Lorain,	(State) Ohio 44052

Findings of Facts and Minutes

On this day this claim was heard and findings and orders were made as follows:

CMS: Hearing continued. Refer to physician of employer's choice at their expense, pursuant to Workmen's Compensation Rule 9B, paragraph 4 and when report filed reset.

HEARD BY M. D. AVERBACH - 10/29/76.

Dismiss C-92A filed 1/2/76 because apparently it has been settled by agreement of settlement order dated 2/13/75.

ENTRY OF DISMISSAL OF THE COURT OF APPEALS IN ALAN R. JONES, ET AL. v. CITY OF CINCINNATI, ET AL.

(Filed October 16, 1980)

No. C-800622

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ALAN R. JONES, *et al.*,
Appellees,

vs.

CITY OF CINCINNATI, *et al.*,
Appellants.

ENTRY OF DISMISSAL

This cause came on to be heard by the Court upon the motion of the appellee for an Order of this Court dismissing the appeal and upon the memorandum in opposition thereto, and

The Court, being fully advised in the premises, finds that said motion is well taken and the same ought to be, and hereby is, granted.

WHEREFORE, it is Ordered and Decreed that the appeal is dimissed.

It is further Ordered that a certified copy of this judgment shall constitute the mandate to the Court of Common Pleas of Hamilton County, Ohio, pursuant to Rule 27, Ohio Rules of Appellate Procedure.